

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 HUASCAR V.,¹ } Case No. 2:18-cv-08343-JDE
12 Plaintiff, }
13 v. } MEMORANDUM OPINION AND
14 } ORDER
15 ANDREW M. SAUL,² Commissioner }
16 for Social Security, }
17 Defendant. }

18
19 Plaintiff Huascar V. (“Plaintiff”) filed a Complaint on September 27,
20 2018, seeking review of the Commissioner’s denial of his application for
21 Supplemental Security Income (“SSI”) benefits. The parties filed a Joint
22 Stipulation (“Jt. Stip.”) regarding the issues in dispute on April 29, 2019. The
23 matter now is ready for decision.

24
25 ¹ Plaintiff’s name has been partially redacted in accordance with Fed. R. Civ. P.
26 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration
and Case Management of the Judicial Conference of the United States.

27 ² Andrew M. Saul, now Commissioner of the Social Security Administration, is
28 substituted as defendant for Nancy A. Berryhill. See Fed. R. Civ. P. 25(d).

I.
BACKGROUND

Plaintiff filed his application for SSI on August 3, 2015, alleging disability commencing on July 1, 2014. Administrative Record (“AR”) 46. After his application was denied (AR 64-69), Plaintiff requested an administrative hearing (AR 70-72), which was held on September 26, 2017 (AR 30-44). Plaintiff, represented by an attorney, appeared and testified at the hearing before an Administrative Law Judge (“ALJ”). AR 32-39.

On December 27, 2017, the ALJ found Plaintiff was not disabled. AR 15-26. The ALJ found Plaintiff: (i) had not engaged in substantial gainful activity since August 3, 2015; (ii) suffered from severe impairments of status post bilateral hand surgery, obesity, and gastroesophageal reflux disease; (iii) did not have an impairment or combination of impairments that met or medically equaled a listed impairment; and (iv) had the residual functional capacity (“RFC”) to perform sedentary work except:

[H]e can lift 10 pounds both frequently and occasionally, sit for six hours of an eight-hour workday, stand and/or walk for six hours of an eight-hour workday, perform postural movements occasionally, push and pull with the upper extremities occasionally, and would be limited to occasional fine and gross manipulation of the upper extremities.

AR 20-22. The ALJ found Plaintiff was incapable of performing his past relevant work as a kitchen helper, stock clerk, or ride attendant; but, given Plaintiff’s age, education, work experience, and RFC, Plaintiff could perform other jobs existing in significant numbers in the national economy. AR 24-25. Accordingly, the ALJ concluded that Plaintiff was not under a “disability,” as defined in the Social Security Act. AR 25.

On July 31, 2018, the Appeals Council denied Plaintiff’s request for review, making the ALJ’s decision the Commissioner’s final decision. AR 1-6.

1 II.

2 LEGAL STANDARDS

3 A. Standard of Review

4 Under 42 U.S.C. § 405(g), a district court may review a decision to deny
5 benefits. An ALJ's decision should be upheld if it is free from legal error and
6 supported by substantial evidence. Brown-Hunter v. Colvin, 806 F.3d 487, 492
7 (9th Cir. 2015) (as amended); Parra v. Astrue, 481 F.3d 742, 746 (9th Cir.
8 2007). Substantial evidence means such relevant evidence as a reasonable
9 person might accept as adequate to support a conclusion. Lingenfelter v.
10 Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla, but less
11 than a preponderance. Id. To determine whether substantial evidence supports
12 a finding, the reviewing court "must review the administrative record as a
13 whole, weighing both the evidence that supports and the evidence that detracts
14 from the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715, 720
15 (9th Cir. 1998). "If the evidence can reasonably support either affirming or
16 reversing," the reviewing court "may not substitute its judgment" for that of
17 the Commissioner. Id. at 720-21; see also Molina v. Astrue, 674 F.3d 1104,
18 1111 (9th Cir. 2012) ("Even when the evidence is susceptible to more than one
19 rational interpretation, [the court] must uphold the ALJ's findings if they are
20 supported by inferences reasonably drawn from the record."). Lastly, even if
21 an ALJ errs, the decision will be affirmed where such error is harmless
22 (Molina, 674 F.3d at 1115), that is, if it is "inconsequential to the ultimate
23 nondisability determination," or if "the agency's path may reasonably be
24 discerned, even if the agency explains its decision with less than ideal clarity."
25 Brown-Hunter, 806 F.3d at 492 (citation omitted).

26 B. Standard for Determining Disability Benefits

27 When case reaches an ALJ, the ALJ conducts a five-step sequential
28 evaluation to determine at each step if the claimant is or is not disabled. See

1 Molina, 674 F.3d at 1110. First, the ALJ considers whether the claimant
2 currently works at a job that meets the criteria for “substantial gainful activity.”
3 Id. If not, the ALJ proceeds to a second step to determine whether the
4 claimant has a “severe” medically determinable physical or mental impairment
5 or combination of impairments that has lasted for more than twelve months.
6 Id. If so, the ALJ proceeds to a third step to determine whether the claimant’s
7 impairments render the claimant disabled because they “meet or equal” any of
8 the “listed impairments” set forth in the Social Security regulations at 20
9 C.F.R. Part 404, Subpart P, Appendix 1. See Rounds v. Comm’r Soc. Sec.
10 Admin., 807 F.3d 996, 1001 (9th Cir. 2015). If the claimant’s impairments do
11 not meet or equal a “listed impairment,” before proceeding to the fourth step
12 the ALJ assesses the claimant’s RFC, that is, what the claimant can do on a
13 sustained basis despite the limitations from his impairments. See 20 C.F.R. §§
14 404.1520(a)(4), 416.920(a)(4); Social Security Ruling 96-8p.

15 After determining the claimant’s RFC, the ALJ proceeds to the fourth
16 step and determines whether the claimant has the RFC to perform past
17 relevant work, either as it was “actually” performed or as that same job is
18 “generally” performed in the national economy. See Stacy v. Colvin, 825 F.3d
19 563, 569 (9th Cir. 2016). If the claimant cannot perform past relevant work, the
20 ALJ proceeds to a fifth and final step to determine whether there is any other
21 work, in light of the claimant’s RFC, age, education, and work experience,
22 that the claimant can perform and that exists in “significant numbers” in either
23 the national or regional economies. See Tackett v. Apfel, 180 F.3d 1094, 1100-
24 01 (9th Cir. 1999). If the claimant can do other work, the claimant is not
25 disabled; but if the claimant cannot do other work and meets the duration
26 requirement, the claimant is disabled. See id. at 1099.

27 The claimant generally bears the burden at each of steps one through
28 four to show either disability or that the requirements to proceed to the next

1 step are met; the claimant bears the ultimate burden to show disability. See,
2 e.g., Molina, 674 F.3d at 1110; Johnson v. Shalala, 60 F.3d 1428, 1432 (9th
3 Cir. 1995). However, at Step Five, the ALJ has a “limited” burden of
4 production to identify representative jobs that the claimant can perform and
5 that exist in “significant” numbers in the economy. See Hill v. Astrue, 698
6 F.3d 1153, 1161 (9th Cir. 2012); Tackett, 180 F.3d at 1100.

7 **III.**

8 **DISCUSSION**

9 The parties present two disputed issues (Jt. Stip. at 2):

10 Issue No. 1: Did the ALJ properly consider Listing 1.02; and

11 Issue No. 2: Did the ALJ properly consider a consultative examiner’s opinion.

12 **A. Applicability of Listing 1.02**

13 As to Issue No. 1, Plaintiff argues the ALJ failed to properly consider the
14 applicability of Listing 1.02, which pertains to a major dysfunction of a joint,
15 because “the ALJ did not independently assess or consider the applicability of
16 this Listing based on his review of the medical record.” Jt. Stip. at 4.

17 **1. Applicable Law**

18 At Step Three, ALJs determine if an impairment or combination of
19 impairments “meets or equals” an impairment listed in 20 C.F.R. Part 404,
20 subpart P, appendix 1 (“the Listings”). 20 C.F.R. §§ 404.1525(a), 404.1526,
21 416.925(a), 416.926. The Listings describe impairments that would prevent an
22 adult, regardless of age, education, or work experience, from performing any
23 gainful activity. An impairment meets a Listing when all of the medical criteria
24 required are satisfied. Tackett, 180 F.3d at 1099 (“To meet a listed impairment,
25 a claimant must establish that he or she meets each characteristic of a listed
26 impairment relevant to his or her claim.”). If an “impairment meets or equals
27 one of the listed impairments, the claimant is conclusively presumed to be
28 disabled.” Bowen v. Yuckert, 482 U.S. 137, 141 (1987).

1 Claimants bear the burden of establishing a prima facie case of disability
2 under the Listings. See Thomas v. Barnhart, 278 F.3d 947, 955 (9th Cir. 2002).
3 “To equal a listed impairment, a claimant must establish symptoms, signs, and
4 laboratory findings at least equal in severity and duration to the characteristics
5 of a relevant listed impairment . . .” Tackett, 180 F.3d at 1099. “Listed
6 impairments are purposefully set at a high level of severity because the listings
7 were designed to operate as a presumption of disability that makes further
8 inquiry unnecessary.” Kennedy v. Colvin, 738 F.3d 1172, 1176 (9th Cir. 2014).

9 An ALJ “must evaluate the relevant evidence before concluding that a
10 claimant’s impairments do not meet or equal a listed impairment.” Lewis v.
11 Apfel, 236 F.3d 503, 512 (9th Cir. 2001). The ALJ need not, however, “state
12 why a claimant failed to satisfy every different section of the listing of
13 impairments.” Gonzalez v. Sullivan, 914 F.2d 1197, 1201 (9th Cir. 1990)
14 (finding that ALJ did not err in failing to state what evidence supported
15 conclusion that, or discuss why, claimant’s impairments did not satisfy
16 Listing). An ALJ’s decision that a plaintiff did not meet a listing must be
17 upheld if it was supported by “substantial evidence.” See Warre v. Comm’r of
18 Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006).

19 2. Analysis

20 Plaintiff contends the ALJ erred by relying on the “one-word” testimony
21 of medical expert Thomas Maxwell, M.D. (“Dr. Maxwell”) as the “sole-basis”
22 for holding that Plaintiff did not meet Listing 1.02.³ Jt. Stip. at 4.

23
24 ³ To satisfy Listing 1.02, Plaintiff had to show the he met the following criteria:
25 [M]ajor dysfunction of a joint(s) (due to any cause): characterized by
26 gross anatomical deformity (e.g. subluxation, contracture, bony or
27 fibrous ankylosis, instability) and chronic joint pain and stiffness with
28 signs of limitation of motion or other abnormal motion of the affect
joint(s), and findings on appropriate medically acceptable imaging of
joint space narrowing, bony destruction, or ankylosis of the affected

1 The ALJ determined Plaintiff “did not have an impairment or
2 combination of impairments that meets or medically equals the severity of one
3 of the listed impairments.” AR 21. The ALJ found that (AR 21):

4 [A]fter carefully reviewing the record . . . [Plaintiff’s] severe
5 impairments do not meet the criteria for listings 1.02 or 1.08. The
6 medical expert, Thomas Maxwell, M.D., testified at the hearing
7 that [Plaintiff’s] impairments do not meet or medically equal a
8 listing. The undersigned gives great weight to this testimony given
9 its consistency with the record and Dr. Maxwell’s ability to question
10 [Plaintiff] and observe his hand impairment at the hearing.
11 Accordingly, the undersigned finds that [Plaintiff’s] severe
12 impairments do not meet or medically equal a listing.

13 The Court finds the ALJ did not err at Step Three. “[A]n ALJ is not
14 required to discuss the combined effects of a claimant’s impairments or
15 compare them to any listing in an equivalency determination, unless the
16 claimant presents evidence in an effort to establish equivalence.” Burch v.

17
18 joint(s). With:

19 A. Involvement of one major peripheral weight-bearing joint (i.e.,
20 hip, knee, or ankle), resulting in inability to ambulate effectively, as
21 defined in 1.00B2b; OR

22 B. Involvement of one major peripheral joint in each upper
23 extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to
24 perform fine and gross movements effectively, as defined in 1.00B2c.

25 20 C.F.R. Part 404, Subpart P, Appendix 1., Listing 1.02. The inability to perform
26 fine or gross movements with the upper extremities is further defined as follows:

27 [I]nability to perform fine and gross movements effectively means an
28 extreme loss of function of both upper extremities; i.e., an impairment(s)
that interferes very seriously with the individual’s ability to
independently initiate, sustain, or complete activities. To use their upper
extremities effectively, individuals must be capable of sustaining such
functions as reaching, pushing, pulling, grasping, and fingering to be able
to carry out activities of daily living.

20 C.F.R. Part 404, Subpart P, Appendix 1, Section 1.00(B)(2)(c).

1 Barnhart, 400 F.3d 676, 683 (9th Cir. 2005). Thus, if a plaintiff fails to offer “a
2 specific theory to establish equivalence” at “the hearing before the ALJ,” then
3 the ALJ is “not required to analyze the evidence to make an equivalency
4 determination.” Mannion v. Berryhill, --- F. App’x ---, 2019 WL 2486702, at *1
5 (9th Cir. June 14, 2019); see also Pruitt v. Comm’r Soc. Sec., 612 F. App’x
6 891, 894 (9th Cir. 2015) (same).

7 Here, Plaintiff presented no evidence, argument or theory to establish the
8 equivalence of Listing 1.02 at the hearing before the ALJ. See AR 30-44. The
9 “ALJ therefore was not required to analyze the evidence to make an
10 equivalency determination.” Mannion, 2019 WL 2486702, at *1.

11 Nonetheless, though not required, the ALJ did recite evidence—Dr.
12 Maxwell’s testimony. AR at 21. Plaintiff argues Dr. Maxwell’s answer “no” in
13 response to a question asking whether Plaintiff’s impairments met a Listing, is
14 insufficient and contradicted by evidence in the record. Jt. Stip. at 3-6. With
15 respect to the brevity of Dr. Maxwell’s testimony: (1) Plaintiff cites no rule that
16 a single-word answer in this or any circumstance cannot constitute substantial
17 evidence; and (2) as the ALJ was not required to analyze the evidence at all
18 due to Plaintiff’s failure to raise the issue at the hearing, the depth of the
19 analysis is sufficient. With respect to Plaintiff’s argument that Dr. Maxwell’s
20 testimony is contrary to the medical evidence, the Court finds substantial
21 evidence supports the ALJ’s finding, including: (1) Dr. Maxwell’s opinion,
22 based upon his review of the record, that Plaintiff was only limited, in part, to
23 “pushing and pulling with the upper extremities limited to occasional, [and]
24 fine and gross manipulation of the upper extremities limited to occasional”
25 (AR 37, 40-41); and (2) the opinion of the consultative examiner, Seung Ha
26 Lim, M.D. (“Dr. Lim”), based in part upon the use of the Jamar Hand
27 Dynamometer, that Plaintiff could generate thirty pounds of force using his
28 right hand and twenty pounds of force using his left hand (AR 23, 351).

1 Accordingly, the ALJ did not err in finding Plaintiff had not met
2 his burden to show he met the criteria of Listing 1.02.

3 **B. The Consultative Examiner's Opinion**

4 In Issue No. 2, Plaintiff argues the ALJ failed at Step Two of the
5 sequential analysis to provide “specific and legitimate reasons” for rejecting the
6 opinion of consultative examiner Bahareh Talei, Psy.D. (“Dr. Talei”), a
7 clinical psychologist. See Jt. Stip. at 11-12.

8 1. Applicable Law

9 At Step Two, the claimant has the burden to show one or more “severe”
10 medically determinable impairments that can be expected to result in death or
11 last for at least twelve months. See Yuckert, at 146 n.5 (noting claimant bears
12 burden at Step Two); Celaya v. Halter, 332 F.3d 1177, 1180 (9th Cir. 2003)
13 (same). To establish an impairment is severe, the claimant must show it
14 “significantly limits [his or her] physical or mental ability to do basic work
15 activities.” 20 C.F.R. § 416.920(c); accord § 416.921(a). An impairment or
16 combination of impairments is not severe only if “the evidence establishes a
17 slight abnormality that has no more than a minimal effect on an individual’s
18 ability to work.” Webb v. Barnhart, 433 F.3d 683, 686 (9th Cir. 2005) (internal
19 citation and quotation marks omitted); see also Smolen v. Chater, 80 F.3d
20 1273, 1290 (9th Cir. 1996) (“[T]he step-two inquiry is a de minimis screening
21 device to dispose of groundless claims.”).

22 “[A]n ALJ may find that a claimant lacks a medically severe impairment
23 or combination of impairments only when his conclusion is ‘clearly established
24 by medical evidence.’” Webb, 433 F.3d at 687 (internal citation omitted).
25 Thus, applying the applicable standard of review to the requirements of Step
26 Two, a court must determine whether an ALJ had substantial evidence to find
27 that the medical evidence clearly established that the claimant did not have a
28 medically severe impairment or combination of impairments. See id. at 688.

1 “There are three types of medical opinions in social security cases: those
2 from treating physicians, examining physicians, and non-examining
3 physicians.” Valentine v. Comm’r Soc. Sec. Admin., 574 F.3d 685, 692 (9th
4 Cir. 2009); see also 20 C.F.R. § 416.902. “As a general rule, more weight
5 should be given to the opinion of a treating source than to the opinion of
6 doctors who do not treat the claimant.” Lester v. Chater, 81 F.3d 821, 830 (9th
7 Cir. 1995). “The opinion of an examining physician is, in turn, entitled to
8 greater weight than the opinion of a nonexamining physician.” Id.

9 “[T]he ALJ may only reject a treating or examining physician’s
10 uncontradicted medical opinion based on clear and convincing reasons”
11 supported by substantial evidence in the record. Carmickle v. Comm’r, Sec.
12 Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (citation omitted); Widmark
13 v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006). “Where such an opinion is
14 contradicted, however, it may be rejected for specific and legitimate reasons
15 that are supported by substantial evidence in the record.” Carmickle, 533 F.3d
16 at 1164 (citation omitted). “When a treating physician’s opinion is
17 contradicted . . . the ALJ must assess its persuasiveness in light of specified
18 factors, including the ‘length of the treatment relationship and the frequency of
19 examination;’ the ‘nature and extent of the treatment relationship;’ and the
20 treating opinion’s consistency ‘with the record as a whole.’” Aranda v.
21 Comm’r Soc. Sec. Admin., 405 F. App’x 139, 141 (9th Cir. 2010) (quoting Orn
22 v. Astrue, 495 F.3d 625, 631 (9th Cir. 2007)).

23 2. Analysis

24 Here, the ALJ found at Step Two that there was “insufficient evidence in
25 the record to support a finding that [Plaintiff] has a medically determinable
26 mental impairment causing more than minimal limitations on [his] work-
27 related activities.” AR 21. In so finding, the ALJ assigned great weight to the
28 opinion of testifying medical expert David Peterson, Ph.D. (“Dr. Peterson”),

1 who found the evidence insufficient to show a mental impairment, and
2 assigned little weight to the opinion of consulting expert Dr. Talei. AR 20-21.

3 Dr. Talei examined Plaintiff once in 2015 and found limitations in his
4 behavioral and intellectual functioning, including: an anxious mood, a mildly
5 diminished attention and concentration span, a moderately diminished memory
6 recall, and intellectual functioning in the mild range of mental retardation with
7 a full-scale IQ of 63. AR 356, 358-59. Dr. Talei also found Plaintiff was
8 cooperative and socially responsive, with clear speech, thoughts organized in a
9 linear matter, a normal response time and work pace, and average insight and
10 judgment. AR 358-59. Dr. Talei concluded Plaintiff had a “moderate inability
11 to understand, remember, and carry out detailed instructions” but could
12 understand, remember, and carry out simplistic instructions, as well as
13 independently make simplistic work-related decisions. AR 361. Dr. Talei listed
14 a number of “[p]robable DSM-IV diagnoses,” including posttraumatic stress
15 disorder, an unspecified learning disorder, and mild mental retardation. AR
16 360. Dr. Talei did not list depression as a diagnosis. AR 360. The ALJ accorded
17 “little weight” to the contradicted opinion of Dr. Talei because it was “based on
18 a single examination of [Plaintiff] without corroboration elsewhere in the
19 record,” to be contrasted to the opinion of Dr. Peterson, who was “familiar
20 with the complete medical record in this case.” AR 20-21.

21 Plaintiff argues the ALJ’s decision to provide little weight to Dr. Talei’s
22 opinion was not supported by specific and legitimate reasons supported by
23 substantial evidence. Jt. Stip. at 11-12. Plaintiff contends the medical evidence
24 of record shows Plaintiff “has consistently been diagnosed with a ‘depressive
25 disorder’ or a ‘major depressive disorder, recurrent,’” and has been prescribed
26 “Paxil in an attempt to help manage his depression.” Jt. Stip. at 11-12.

27 The Court finds that the ALJ properly considered the opinion of Dr.
28 Talei here. First, although Plaintiff argues in the Joint Stipulation that he has

1 “been consistently diagnosed” with depression-related ailments, “diagnosis
2 alone is insufficient for finding a ‘severe’ impairment, as required by the social
3 security regulations.” Febach v. Colvin, 580 F. App’x 530, 531 (9th Cir. 2014).

4 Second, although Plaintiff asserts the ALJ erred in rejecting Dr. Talei’s
5 opinion because that the record reflects a history of depression, Dr. Talei did
6 not opine that Plaintiff suffered from depression. See AR 361. Thus, the ALJ’s
7 rejection of Dr. Talei’s opinion (as opposed to other medical sources), does not
8 reflect rejection of any alleged history of depression.

9 Third, the ALJ appropriately compared the bases for Dr. Talei’s
10 opinion to the bases of Dr. Peterson’s opinion.⁴ As the ALJ noted, Dr. Talei
11 was not familiar with Plaintiff’s complete medical record, whereas Dr.
12 Peterson’s opinion was based upon “the complete medical record in the case.”
13 AR 20-21, AR 360 (noting “[m]ental health records [were] not provided” to
14 Dr. Talei). The level of knowledge a medical source possesses regarding
15 alleged impairments is relevant to assessing the weight accorded to a medical
16 source’s opinion. See 20 C.F.R. §§ 404.1527(c)(6), 416.927(c)(6).

17 Fourth, aside from depression, which Dr. Talei did not diagnose and
18 thus is not properly raised by a challenge to Dr. Talei’s opinion, the ALJ noted
19 the lack of evidentiary support for the existence of a medically determinable
20 mental disorder that caused more than minimal limitations on Plaintiff’s work-
21 related activities, citing in particular his review of the treatment records of
22 Plaintiff’s treating physician, Luzviminda Montecillo, M.D. (“Dr.

24 ⁴ The ALJ’s decision twice refers to “Dr. Maxwell” in comparing Dr.
25 Peterson’s testimony to Dr. Talei’s report. AR 20 (final paragraph). Both Dr. Maxwell
26 and Dr. Peterson testified at the hearing; Dr. Maxwell opined as to Plaintiff’s
27 “physical ability” (AR 40) and Dr. Peterson opined as to Plaintiff’s “mental
28 condition” (AR 41). It appears that the ALJ intended to refer to Dr. Peterson only
when comparing the testimony to Dr. Talei’s report (AR 20), not Dr. Maxwell.

1 Montecillo”). AR 20-21. Although Dr. Montecillo diagnosed Plaintiff with
2 major depressive disorder, which again, was not diagnosed by Dr. Talei, Dr.
3 Montecillo further reported such depression was “stable on Paxil” as of
4 February 18, 2016. An impairment that can effectively be controlled by
5 medication is not disabling. Warre, 439 F.3d at 1006. Dr. Montecillo’s reports
6 do not otherwise reflect any mental health issues that caused more than
7 minimal limitations on Plaintiff’s work-related activities. An ALJ may reject a
8 physician’s opinion that is unsupported by the record as a whole. Batson v.
9 Comm’r Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004).

10 The ALJ considered the contradicted opinion of Dr. Talei, who met with
11 Plaintiff once and did not review his medical records, and, in electing to afford
12 little weight to that opinion, provided specific and legitimate reasons supported
13 by substantial evidence for doing so. In considering all of the evidence, the
14 ALJ properly found Plaintiff had not met his burden of showing a severe
15 mental health impairment at Step Two. Nonetheless, the ALJ did resolve the
16 Step Two analysis in Plaintiff’s favor, finding severe physical impairments,
17 which meant the ALJ continued the analysis through the final steps of the
18 disability determination. See Hoopai v. Astrue, 499 F.3d 1071, 1076 (9th Cir.
19 2007) (the Step Two finding is “merely a threshold determination” that “only
20 raises a prima facie case of a disability”); Burch, 400 F.3d at 682 (concluding
21 that any error ALJ committed at Step Two was harmless where the step was
22 resolved in claimant’s favor); Kemp v. Berryhill, 2017 WL 3981195, at *5
23 (C.D. Cal. Sept. 8, 2017) (any error in declining to find impairments severe
24 harmless because Step Two is the “gatekeeping” step, and the ALJ continued
25 the analysis). Here, the ALJ did not err.

26 / / /


27 / / /

28 / / /

1 IV.
2 ORDER

3 IT THEREFORE IS ORDERED that Judgment be entered affirming
4 the decision of the Commissioner and dismissing this action with prejudice.
5

6 Dated: July 08, 2019

7
8 
9 JOHN D. EARLY
United States Magistrate Judge